General Assembly **Substitute Bill No. 68**

February Session, 2010 *____SB00068GAE__041510___*

AN ACT CONCERNING THE DEPARTMENT OF SOCIAL SERVICES' RECOMMENDED CHANGES TO THE MEDICAL ASSISTANCE AND PHARMACY STATUTES.

Be it enacted by the Senate and House of Representatives in General Assembly convened:

Section 1. Section 17b-221b of the general statutes is repealed and the following is substituted in lieu thereof (*Effective from passage*):

For the fiscal year ending June 30, 2002, and each fiscal year thereafter, all federal matching funds received by the Department of Social Services for special-education-related services rendered in schools pursuant to section 10-76d, exclusive of any enhanced federal medical assistance percentages used in calculating the federal portion of Medicaid claims processed for Medicaid eligible special education and related services provided to Medicaid eligible students in the school district, shall be deposited in the General Fund and credited to a nonlapsing account in the Department of Social Services. Sixty per cent of such funds shall be expended by the Department of Social Services for payment of grants to towns pursuant to subdivision (3) of subsection (a) of section 10-76d and the remaining funds shall be available for expenditure by the Department of Social Services for the payment of Medicaid claims.

Sec. 2. Section 17b-274 of the general statutes is repealed and the following is substituted in lieu thereof (*Effective from passage*):

(a) The Division of Criminal Justice shall periodically investigate pharmacies to ensure that the state is not billed for a brand name drug product when a less expensive generic substitute drug product is dispensed to a Medicaid recipient. The Commissioner of Social Services shall cooperate and provide information as requested by such division.

(b) A licensed medical practitioner may specify in writing or by a telephonic or electronic communication that there shall be no substitution for the specified brand name drug product in any prescription for a **[**Medicaid, state-administered general assistance, or ConnPACE**]** recipient of benefits under a medical assistance program administered by the Department of Social Services, provided (1) the practitioner specifies the basis on which the brand name drug product and dosage form is medically necessary in comparison to a chemically equivalent generic drug product substitution, and (2) the phrase "brand medically necessary" shall be in the practitioner's handwriting on the prescription form or, if the prohibition was communicated by telephonic communication, in the pharmacist's handwriting on such form, and shall not be preprinted or stamped or initialed on such form. If the practitioner specifies by telephonic communication that there shall be no substitution for the specified brand name drug product in any prescription for a **[**Medicaid, state-administered general assistance, or ConnPACE**]** recipient of benefits under a medical assistance program administered by the Department of Social Services, written certification in the practitioner's handwriting bearing the phrase "brand medically necessary" shall be sent to the dispensing pharmacy within ten days. A pharmacist shall dispense a generically equivalent drug product for any drug listed in accordance with the Code of Federal Regulations Title 42 Part 447.332 for a drug prescribed for a **[**Medicaid, state-administered general assistance, or ConnPACE**]** recipient of benefits under a medical assistance program administered by the Department of Social Services unless the phrase "brand medically necessary" is ordered in accordance with this subsection and such pharmacist has received approval to dispense the brand name

drug product in accordance with subsection (c) of this section.

(c) The Commissioner of Social Services shall implement a procedure by which a pharmacist shall obtain approval from an independent pharmacy consultant acting on behalf of the Department of Social Services, under an administrative services only contract, whenever the pharmacist dispenses a brand name drug product to a **[**Medicaid, state-administered general assistance, or ConnPACE**]** recipient of benefits under a medical assistance program administered by the Department of Social Services and a chemically equivalent generic drug product substitution is available. The length of authorization for brand name drugs shall be in accordance with section 17b-491a. In cases where the brand name drug is less costly than the chemically equivalent generic drug when factoring in manufacturers' rebates, the pharmacist shall dispense the brand name drug. If such approval is not granted or denied within two hours of receipt by the commissioner of the request for approval, it shall be deemed granted. Notwithstanding any provision of this section, a pharmacist shall not dispense any initial maintenance drug prescription for which there is a chemically equivalent generic substitution that is for less than fifteen days without the department's granting of prior authorization, provided prior authorization shall not otherwise be required for atypical antipsychotic drugs if the individual is currently taking such drug at the time the pharmacist receives the prescription. The pharmacist may appeal a denial of reimbursement to the department based on the failure of such pharmacist to substitute a generic drug product in accordance with this section.

(d) A licensed medical practitioner shall disclose to the Department of Social Services or such consultant, upon request, the basis on which the brand name drug product and dosage form is medically necessary in comparison to a chemically equivalent generic drug product substitution. The Commissioner of Social Services shall establish a procedure by which such a practitioner may appeal a determination that a chemically equivalent generic drug product substitution is required for a **[**Medicaid, state-administered general assistance, or

ConnPACE**]** recipient of benefits under a medical assistance program administered by the Department of Social Services.

Sec. 3. Section 17b-274a of the general statutes is repealed and the following is substituted in lieu thereof (*Effective from passage*):

The Commissioner of Social Services may establish maximum allowable costs to be paid under **[**the Medicaid, state-administered general assistance, ConnPACE and Connecticut AIDS drug assistance**]** medical assistance programs administered by the Department of Social Services for generic prescription drugs based on, but not limited to, actual acquisition costs. The department shall implement and maintain a procedure to review and update the maximum allowable cost list at least annually, and shall report annually to the joint standing committee of the General Assembly having cognizance of matters relating to appropriations and the budgets of state agencies on its activities pursuant to this section.

Sec. 4. Section 17b-274c of the general statutes is repealed and the following is substituted in lieu thereof (*Effective from passage*):

(a) The Commissioner of Social Services may establish a voluntary mail order option for any maintenance prescription drug covered under **[**the Medicaid, state-administered general assistance, ConnPACE or Connecticut AIDS drug assistance programs**]** a medical assistance program administered by the Department of Social Services.

(b) Notwithstanding any provision of the general statutes or regulations adopted pursuant thereto, the Commissioner of Social Services may provide a voluntary mail order option, regardless of a mail order pharmacy's location, for any prescription drug covered under the Medicare Part D program established pursuant to Public Law 108-173, the Medicare Prescription Drug, Improvement, and Modernization Act of 2003.

Sec. 5. Section 17b-274d of the 2010 supplement to the general statutes is repealed and the following is substituted in lieu thereof

(*Effective from passage*):

(a) Pursuant to 42 USC 1396r-8, there is established a Pharmaceutical and Therapeutics Committee within the Department of Social Services.

(b) The Pharmaceutical and Therapeutics Committee shall be comprised as specified in 42 USC 1396r-8 and shall consist of **[**fourteen**]** sixteen members appointed by the Governor. **[**Five**]** Six members shall be physicians licensed pursuant to chapter 370, including one general practitioner, one pediatrician, one geriatrician, one psychiatrist who primarily treats adults, one child and adolescent psychiatrist and one specialist in family planning, four members shall be pharmacists licensed pursuant to chapter 400j, two members shall be visiting nurses, one specializing in adult care and one specializing in psychiatric care, one member shall be a clinician designated by the Commissioner of Mental Health and Addiction Services, one member shall be a clinician designated by the Commissioner of Children and Families, one member shall be a representative of pharmaceutical manufacturers and one member shall be a consumer representative. The committee may, on an ad hoc basis, seek the participation of other state agencies or other interested parties in its deliberations. The members shall serve for terms of two years from the date of their appointment. Members may be appointed to more than one term. The Commissioner of Social Services, or the commissioner's designee, shall convene the committee following the Governor's designation of appointments. The administrative staff of the Department of Social Services shall serve as staff for said committee and assist with all ministerial duties. The Governor shall ensure that the committee membership includes Medicaid participating physicians and pharmacists, with experience serving recipients of benefits under medical assistance programs administered by the Department of Social Services.

(c) Committee members shall select a chairperson and vice-chairperson from the committee membership on an annual basis.

(d) The committee shall meet at least quarterly, and may meet at other times at the discretion of the chairperson and committee membership. The committee shall comply with all regulations adopted by the department, including notice of any meeting of the committee, pursuant to the requirements of chapter 54.

(e) The Department of Social Services, in consultation with the Pharmaceutical and Therapeutics Committee, may adopt preferred drug lists for use in **[**the Medicaid, state-administered general assistance and ConnPACE**]** medical assistance programs administered by the Department of Social Services. The Department of Social Services, upon entering into a contract for the provision of prescription drug coverage to medical assistance recipients receiving services in a managed care setting as provided by section 17b-266a, shall in consultation with the Pharmaceutical and Therapeutics Committee, expand the preferred drug list for use in the HUSKY Plan, Part A and Part B. To the extent feasible, the department shall review all drugs included on the preferred drug lists at least every twelve months, and may recommend additions to, and deletions from, the preferred drug lists, to ensure that the preferred drug lists provide for medically appropriate drug therapies for **[**Medicaid, state-administered general assistance and ConnPACE patients**]** recipients of benefits under medical assistance programs administered by the Department of Social Services. **[**For the fiscal year ending June 30, 2004, such drug lists shall be limited to use in the Medicaid and ConnPACE programs and cover three classes of drugs, including proton pump inhibitors and two other classes of drugs determined by the Commissioner of Social Services. Not later than June 30, 2005, the Department of Social Services, in consultation with the Pharmaceutical and Therapeutic Committee shall expand such drug lists to include other classes of drugs, except as provided in subsection (f) of this section, in order to achieve savings reflected in the amounts appropriated to the department, for the various components of the program, in the state budget act.**]**

(f) Nonpreferred drugs in the classes of drugs included on the preferred drug lists shall be subject to prior authorization. Prior

authorization is not required for any mental-health-related drug that has been filled or refilled, in any dosage, at least one time in the one-year period prior to the date the individual presents a prescription for the drug at a pharmacy. If prior authorization is granted for a drug not included on a preferred drug list, the authorization shall be valid for one year from the date the prescription is first filled. Antiretroviral classes of drugs shall not be included on the preferred drug lists.

(g) The Department of Social Services shall publish and disseminate the preferred drug lists to all **[**Medicaid**]** providers in the state that participate in medical assistance programs administered by the department.

(h) The department may negotiate supplemental rebate agreements with manufacturers that are in addition to those required under Title XIX of the Social Security Act. The committee shall ensure that the pharmaceutical manufacturers agreeing to provide a supplemental rebate pursuant to 42 USC 1396r-8(c) have an opportunity to present evidence supporting inclusion of a product on the preferred drug lists unless a court of competent jurisdiction, in a final decision, determines that the Secretary of Health and Human Services does not have authority to allow such supplemental rebates, provided the inability to utilize supplemental rebates pursuant to this subsection shall not impair the committee's authority to maintain preferred drug lists. Upon timely notice, the department shall ensure that any drug that has been approved, or had any of its particular uses approved, by the United States Food and Drug Administration under a priority review classification, will be reviewed by the Pharmaceutical and Therapeutics Committee at the next regularly scheduled meeting. To the extent feasible, upon notice by a pharmaceutical manufacturer, the department shall also schedule a product review for any new product at the next regularly scheduled meeting of the Pharmaceutical and Therapeutics Committee.

(i) Factors considered by the department and the Pharmaceutical and Therapeutics Committee in developing the preferred drug lists

shall include, but not be limited to, clinical efficacy, safety and cost effectiveness of a product.

(j) The Pharmaceutical and Therapeutics Committee may also make recommendations to the department regarding the prior authorization of any prescribed drug.

(k) A recipient who is denied a nonpreferred drug may request an administrative hearing in accordance with section 17b-60.

(l) The Commissioner of Social Services may contract with a pharmacy benefits organization or a single entity qualified to negotiate with pharmaceutical manufacturers for supplemental rebates, available pursuant to 42 USC 1396r-8(c), for the purchase of drugs listed on the preferred drug lists established pursuant to subsection (e) of this section.

Sec. 6. Section 17b-274e of the general statutes is repealed and the following is substituted in lieu thereof (*Effective from passage*):

A pharmacist, when filling a prescription under **[**the Medicaid, ConnPACE, Connecticut AIDS drug assistance or the state-administered general assistance programs**]** a medical assistance program administered by the Department of Social Services, shall fill such prescription utilizing the most cost-efficient dosage, consistent with the prescription of a prescribing practitioner as defined in section 20-571, unless such pharmacist receives permission to do otherwise pursuant to the prior authorization requirements set forth in sections 17b-274, as amended by this act, and 17b-491a.

Sec. 7. Section 17b-280 of the 2010 supplement to the general statutes is repealed and the following is substituted in lieu thereof (*Effective from passage*):

(a) The state shall reimburse for all legend drugs provided under **[**the Medicaid, state-administered general assistance, ConnPACE and Connecticut AIDS drug**]** medical assistance programs administered by

the Department of Social Services at the lower of (1) the rate established by the Centers for Medicare and Medicaid Services as the federal acquisition cost, (2) the average wholesale price minus fourteen per cent, or (3) an equivalent percentage as established under the Medicaid state plan. The commissioner shall also establish a professional fee of two dollars and sixty-five cents for each prescription to be paid to licensed pharmacies for dispensing drugs to **[**Medicaid, state-administered general assistance, ConnPACE and Connecticut AIDS drug assistance**]** recipients of benefits under medical assistance programs administered by the Department of Social Services in accordance with federal regulations; and on and after September 4, 1991, payment for legend and nonlegend drugs provided to Medicaid recipients shall be based upon the actual package size dispensed. Effective October 1, 1991, reimbursement for over-the-counter drugs for such recipients shall be limited to those over-the-counter drugs and products published in the Connecticut Formulary, or the cross reference list, issued by the commissioner. The cost of all over-the-counter drugs and products provided to residents of nursing facilities, chronic disease hospitals, and intermediate care facilities for the mentally retarded shall be included in the facilities' per diem rate. Notwithstanding the provisions of this subsection, no dispensing fee shall be issued for a prescription drug dispensed to a ConnPACE or Medicaid recipient who is a Medicare Part D beneficiary when the prescription drug is a Medicare Part D drug, as defined in Public Law 108-173, the Medicare Prescription Drug, Improvement, and Modernization Act of 2003.

(b) The Department of Social Services may provide an enhanced dispensing fee to a pharmacy enrolled in the federal Office of Pharmacy Affairs Section 340B drug discount program established pursuant to 42 USC 256b or a pharmacy under contract to provide services under said program.

Sec. 8. Section 17b-491b of the general statutes is repealed and the following is substituted in lieu thereof (*Effective from passage*):

The maximum allowable cost paid for Factor VIII pharmaceuticals under **[**the Medicaid, state-administered general assistance, and ConnPACE**]** medical assistance programs administered by the Department of Social Services shall be the actual acquisition cost plus eight per cent. The Commissioner of Social Services may designate specific suppliers of Factor VIII pharmaceuticals from which a dispensing pharmacy shall order the prescription to be delivered to the pharmacy and billed by the supplier to the Department of Social Services. If the commissioner so designates specific suppliers of Factor VIII pharmaceuticals, the department shall pay the dispensing pharmacy a handling fee equal to eight per cent of the actual acquisition cost for such prescription.

Sec. 9. Subsection (c) of section 20-619 of the general statutes is repealed and the following is substituted in lieu thereof (*Effective from passage*):

(c) A prescribing practitioner may specify in writing or by a telephonic or other electronic communication that there shall be no substitution for the specified brand name drug product in any prescription, provided (1) in any prescription for a **[**Medicaid, state-administered general assistance, or ConnPACE**]** recipient of benefits under a medical assistance program administered by the Department of Social Services, such practitioner specifies the basis on which the brand name drug product and dosage form is medically necessary in comparison to a chemically equivalent generic drug product substitution, and (2) the phrase "BRAND MEDICALLY NECESSARY", shall be in the practitioner's handwriting on the prescription form or on an electronically-produced copy of the prescription form or, if the prohibition was communicated by telephonic or other electronic communication that did not reproduce the practitioner's handwriting, a statement to that effect appears on the form. The phrase "BRAND MEDICALLY NECESSARY" shall not be preprinted or stamped or initialed on the form. If the practitioner specifies by telephonic or other electronic communication that did not reproduce the practitioner's handwriting that there shall be no substitution for the specified brand

name drug product in any prescription for a **[**Medicaid, state-administered general assistance, or ConnPACE**]** recipient of benefits under a medical assistance program administered by the Department of Social Services, written certification in the practitioner's handwriting bearing the phrase "BRAND MEDICALLY NECESSARY" shall be sent to the dispensing pharmacy within ten days.

This act shall take effect as follows and shall amend the following sections:		
Section 1	*from passage*	17b-221b
Sec. 2	*from passage*	17b-274
Sec. 3	*from passage*	17b-274a
Sec. 4	*from passage*	17b-274c
Sec. 5	*from passage*	17b-274d
Sec. 6	*from passage*	17b-274e
Sec. 7	*from passage*	17b-280
Sec. 8	*from passage*	17b-491b
Sec. 9	*from passage*	20-619(c)

HS *Joint Favorable Subst.-LCO*

GAE *Joint Favorable*